

Commissioner of Income-Tax, Kerala and Coimbatore

Vs

P. Krishna Warriar

Civil Appeals Nos. 606 to 610 of 1963

(K. Subba Rao, J. C. Shah, S. M. Sikri JJ)

29.04.1964

JUDGMENT

SUBBA RAO J. -

These appeals by special leave raise the question of the construction of the provisions of section 4(3)(i) of the Indian Income-tax Act, 1922, hereinafter called the Act, as amended by the Indian Income-tax (Amendment) Act, 1953, hereinafter called the Amending Act.

The facts are as follows. One P. S. Warriar, an eminent Ayurvedic physician, carried on business in Ayurvedic drugs under the name and style of "Arya Vaidya Sala" and was also running a hospital named "Arya Sikitsa Sala" and a school called "Arya Vaidya Pata Sala". The said Warriar died on January 30, 1944, after executing a will wherein he created a trust in respect of his properties, including the Arya Vaidya Sala. He gave directions to the trustees appointed under the said will to conduct the said business and to disburse the income therefrom in certain proportions to the Arya Vaidya Sala, Arya Sikitsa Sala and Arya Vaidya Pata Sala and to his descendants. Broadly stated 60 per cent. of the income was directed to be spent on the said three institution and 40 per cent. to be given to his descendants. Till the Amending Act came into force the income-tax department gave exemption from assessment for the 60 per cent. of the income under section 4(3)(i) of the Act; but, after the Amending Act came into force,

Mr. Rajagopal Sastri, learned counsel for the revenue, contends that under section 4(3)(i) of the Act, whereunder the said income is given exemption from taxation, the property wherefrom the income is derived shall have been held under trust wholly or in part for religious or charitable purposes, that the business run under the name and style of Arya Vaidya Sala was not capable of being held in trust, that even if it was capable of being held under trust, it was not wholly or in part so held in trust for religious or charitable purposes, as only a part of the income was directed to be spent for religious or charitable purpose and that, in the circumstances, clause (b) of the proviso was attracted but conditions laid down thereunder were not complied with.

Learned counsel for the respondent, Mr. S. T. Desai, contends that business is property within the meaning of section 4(3)(i) of the Act and that it is held in trust in part for religion and charitable purposes and, therefore, the substantive part of the provision is attracted to the facts of the case and hence the proviso is excluded.

Before we construe the relevant provisions of the Act and consider the arguments advanced on either side, it would be convenient at the outset to read the material part of the will and to ascertain the scope of the bequest created thereunder. The will is marked as annexure "A2" in the case. The

relevant parts of the will read :

"1. Will executed by Panniampalli Warriath deceased Parvathi alias Kunhikutty Warassiar's son Sri Sankunny Warriar known as Vaidyaratnam Sri P. S. Warriar, residing at Puthan Warian in Kottakkal Amsom and Desom of Ernad Taluk."

"7. Apart from the properties mentioned in Schedules B, C and D all other properties, movable as well as immovable, belonging to me I hereby constitute into a trust to be managed by the trustees as per the directions in the will. They are described in Schedule E, and on my demise those properties will vest in the trustees. It is my intention that except the properties mentioned in paras. 4 and 5 (B, C and D Schedules) all my properties are to be included in the trust and, therefore, even if some item of property is left out by inadvertence, it is also to be deemed included in the trust and vested in the trustees."

"8. Provision regarding the trust. - I hereby nominate the following persons as the first Board of Trustees : . . . (Name of 7 persons given)"

"9. The above trust is to be managed and conducted according to the terms and conditions detailed below :-

G. The primary and chief objects of the Trust are to carry on for ever The two institutions, viz., the Arya Vaidya Sala and the Arya Vaidya Hospital on the lines followed now with the object of enlarging and increasing their scope and utility. The work of Arya Vaidya Sala now consists of :

1. preparation of Ayurvedic medicines,
2. sale of the same,
3. treatment of patients, receiving from them compensation according to their capacity and means.
4. to conduct research into Arya Vaidyam with a view to make it more and more useful to the public.

H. The following are the matters conducted in the institution called the Arya Vaidya Hospital.

1. To examine poor patients free of charge, to prescribe treatment for them and give medicines gratis (out-patient department).
2. To take in at least 12 poor patients at any time, give them lodging and board and also free medicines and treatment free (the in-patient department).
3. To carry out the said services with the help of an Arya Vaidyan and necessary operations with the help of an Allopathic doctor.
4. Give treatment and medicines to all persons seeking them, receiving from such of them as are able such remuneration as they can afford including cost of medicines. The Arya a Vaidya Hospital is now carried on with the medicines supplied by and taken from the Arya Vaidya Sala and the incidental expenses are now met from out

of the funds of the Arya Vaidya Sala.

J. The trustees are to run the above institutions according to the intentions expressed above with such modifications as the circumstances may warrant.

K. In the Arya Vaidya Patasala run under the auspices of the Arya Samajam, Aryavaidyam is taught in accordance with the science of Ayurveda. I have been meeting the expenses of the said institutions, not covered by its income, from out of the profits of Arya Vaidya Sala.

L. Out of the net profits of the Arya Vaidya Sala 25% is to be devoted to the development of the Arya Vaidya Sala, 25% for meeting the expenses of the Arya Vaidya Hospital and 25% for division equally between the two tavazhies (this only for 20 years); out of the remaining 25% a sum not exceeding 10% after disbursement to the Arya Vaidya Patasala, may be used for the Arya Vaidya Sala itself. The balance 15% are to be deposited by the Trustees each year in approved banks as a reserve fund for the two tavazhies for a period of 20 years and the fund thus accumulated inclusive of interest is to be divided equally among the two tavazhies equally, i.e., in moiety, and it will be the duty of the Trustees to invest the same on the authority of immovable properties.

M. The Trustees are not bound to pay any amount to the said two tavazhies after the expiry of 20 years. The 40% of the profits so earmarked for 20 years and so released after the expiry of 20 years are therefore to be utilised for the development of the Arya Vaidya Sala and Arya Vaidya Hospital according to the discretion of the Trustees.

E Schedule : All remaining properties constituted into the Trust."

It will be seen from the said recitals of the will that the testator created a trust in respect of his entire properties, including those mentioned in Schedules B, C and D and specifically vested them into the trustees appointed thereunder. The properties so vested included the business carried on in the name and style of Arya Vaidya Sala. The main objects of the trust were to carry on the said two institutions, namely, Arya Vaidya Sala and Arya Vaidya Hospital and also the other objects mentioned thereunder. Out of the income from the business so vested in the trustees, he directed the trustees to spend 25% for the development of Arya Vaidya Sala, 25% to meet the expenses of the Arya Vaidya Hospital, not exceeding 10% for the Arya Vaidya Patasala, 25% to be shared equally by two branches of the family of the testator for a period of 20 years and thereafter to be utilized for the purpose of the Arya Vaidya Sala and Arya Vaidya Hospital and 15% to be given to the said branches; that is to say, 60% of the total

"4. (3) Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them :

(i) any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for a application, thereto.

Provided that such income shall be included in the total income -

(b) in the case of income derived from the business carried on on behalf of a religious or charitable institution, unless the income is applied wholly for the purposes of the institution and either -

(i) the business is carried on in the course of the actual carrying out of a primary purposes of the institution, or

(ii) the work in connection with the business is mainly carried on by beneficiaries of the institution."

A brief history of the proviso may not be out of place here. Before the amendment of this clause by the Amending Act of 1953 the proviso was in the form of a separate substantive clause and was numbered as clause (ia). The said clause (ia) came under judicial scrutiny. It was argued on behalf of the revenue that though a business was held under trust for religious or charitable purposes, it would fall under clause (ia) and the income therefrom could not be exempted from income-tax unless the conditions laid down in the said clause were complied with. In *Charitable Gadodia Swadeshi Stores v. Commissioner of Income-tax* the Lahore High Court rejected that contention, and one of the reasons given for the rejection was that if the said clause was intended to narrow down the scope of clause (i), the said clause should have been added as a proviso to the old clause. Presumably on the basis of this suggestion the Amending Act of 1953 substituted clause (ia) by clause (b) of the proviso. But it is not an inflexible r

With these introductory remarks we shall proceed to construe the provisions of section 4(3)(i) of the Act along with clause (b) of the proviso. Under clause (i), so far as it is relevant to the question raised before us, to earn the exemption the income shall have been derived from property under trust wholly or in part held for religious or charitable purposes. Under clause (b) of the proviso to that clause, in the case of income derived from business carried on on behalf of a religious or charitable institution, unless the conditions laid down thereunder are complied with, the said income cannot be exempted. If business is property and is held under trust wholly or partly for religious or charitable purposes, it falls squarely under the substantive part of clause (i) and in that event clause (b) of the proviso cannot be attracted, as under that clause of the proviso the business mentioned therein is not held under trust but one carried on on behalf of a religious or charitable institution. To take a business was held in trust in part for religious or charitable purpose. The argument advanced on behalf of the revenue is that the expression "in part" in clause (i) applies only to a case where an aliquot part of property is vested in trust and that is not legally possible in the case of business. It is said that a business is one and indivisible and, therefore, the subject-matter of trust can only be the share of the profits payable to a partner during the continuance of the partnership or after its dissolution. Reliance is placed in support of the said proposition on the decision in *K. A. Ramachar v. Commissioner of Income-tax*, *David Burnet v. Charles P. Leininger* and *Mohammad Ibrahim Riza v. Commissioner of Income-tax*. The first two decisions dealt with a different problem, viz., whether an assessee is liable to tax on his share of profits in a firm after settling or assigning the same in favour of a third party and the courts have held that the profits accrued to the assessee before the assignments cou

In our view, the expression "in part" does not refer to an aliquot part; if half a house is held in trust wholly for religious or charitable purpose, it would be covered by the first part of the substantive clause of clause (i), for in that event the subject-matter of the trust is only the said half of the house and that half is held wholly for religious or charitable purposes. The expression "in part", therefore, must apply to a case other than a property a part of which is wholly held for religious or charitable purposes. In India there are a variety of trusts wherein there is no complete dedication of the property but only a partial dedication. A property may be dedicated entirely to a religious or charitable institution or to a deity. This is an instance of complete dedication. A property may be dedicated to a deity, subject to a charge that a part of the income shall be given to the grantor's heirs.

A property may be given to an individual subject to, or burdened with, a charge in favour of an idol or a

Even so it is contended that clause (b) of the proviso imposes further limitations before the exemption can be granted. But the said clause of the proviso only applies to the case of income derived from business carried on on behalf of a religious or charitable institution. A business held in trust wholly or in part for religious or charitable purposes is not a business carried on on behalf of the a religious or charitable institution, for the business itself is held in trust. A few decisions cited at the Bar bringing out the distinction between the substantive part of clause (i) of section 4(3) and clause (b) of the proviso may usefully be referred to at this stage. Where a business was held in trust for charitable purposes, a Division Bench of the Bombay High Court in *Dharma Vijaya Agency v Commissioner of Income-tax* held that it was not business which was carried on on behalf of religious or charitable institutions within the meaning of clause (b) of the proviso. Shah J., after considering the relevant au

"In our view, the business referred to in clause (b) of the proviso need not be business which is held for religious or charitable purposes, provided it is business carried on on behalf of a religious or charitable institution."

Desai J. stated thus :

"...it is impossible to equate the scope of proviso (b) with the scope of property consisting of business held under trust wholly for religious or charitable purposes. It must of necessity mean that we have in clause (i) a very wide category of business which is trust property, and we have in proviso (b) a restricted and a lesser category of business which is carried on by or on behalf of a religious or charitable institution."

A Division Bench of the Kerala High Court in *Dharmodayam Co. v. Commissioner of Income-tax* expressed much to the same effect. A Division Bench of the Madras High Court in *Thiagesar Dharma Vanikam v. Commissioner of Income-tax*, after considering the decisions of the various High Courts and the relevant provisions of the Act, observed :

"When the trustee acts, it is only the trust that acts, as the trustee fully represents the trust. A business carried on on behalf of a trust rather indicates a business which is not held in trust, than a business of the trust run by the trustees."

It concluded thus :

"In our opinion proviso (b) to section 4(3)(i) does not restrict the operation of the main provision in section 4(3)(i). If a trust carries on business and the business itself is held in trust and the income from such business is applied or accumulated for application for the purpose of the trust, which must of course be of a religious or a charitable character, the conditions prescribed in section 4(3)(i) are fulfilled and the income is exempt from taxation. This exemption cannot be defeated even if the business were to be conducted by somebody else acting on behalf of the trust. Proviso (b) to section 4(3)(i) has application only to business which are not held in trust, and the field of its operation is, therefore, distinct and separate from that covered by section 4(3)(i)."

Emphasis is laid upon the expression "such income" in the opening words of the proviso and a contention is raised that the income dealt with in the proviso is income derived from property held under trust. To state it differently, the adjective "such" in the expression "such income" refers back to the income in the substantive clause. There is some plausibility in the contention, but if the interpretation be accepted, we will be attributing an intention to the legislature to make a distinction between business and other property though both of them are held under trust. There is no acceptable reason for this distinction. That apart, the expression "such" may as well refer to the "income" in the opening sentence of sub-section (3).

The said sub-section says that the incomes mentioned thereunder shall not be included in the total income, but the proviso lifts the ban and says that such incomes shall be included in the total income if the conditions laid down are satisfied. We think that the expression "such income" only means the income accruing or arising in favour of the trust.

The legal position may briefly be stated thus. Clause (i) of section 4(3) of the Act takes in every property or a fractional part of it held in trust wholly for religious or charitable purposes. It also takes in such property held only in part for such purposes. Business is also property within the meaning of the said clause. Clause (b) of the proviso to section 4(3)(i) applies only to a business not held in trust but carried on on behalf of religious or charitable institutions.

For the foregoing reasons we hold that the High Court has correctly answered the question referred to it.

In the result, the appeals fail and are dismissed with costs. One set of hearing fees.

Appeals dismissed.

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